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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/529,766

05/05/2005

Bendik Bo

05045

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23338

7590

02/08/2007

DENNISON, SCHULTZ & MACDONALD

1727 KING STREET

SUITE 105

ALEXANDRIA, VA 22314

EXAMINER

MATTER, KRISTEN CLARETTE

ART UNIT

PAPER NUMBER

3771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/08/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/529,766

Applicant(s)

BO, BENDIK

Examiner

Kristen C. Matter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3/30/05.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "1A" and "1B" have both been used to designate plate elements (whether there is 2 or 4 elements). Furthermore, the English alphabet must be used for letters, except where another alphabet is customarily used, such as the Greek alphabet to indicate angles, wavelengths, and mathematical formulas. Please note MPEP §608.02(p)(2). Therefore, reference characters 1A, 1B, 4A, and 4B, for example, should be changed to appropriate individual reference characters.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112,

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first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are:

on page 2, line 10, “animals muscle groups” should be changed to --animal’s muscle groups--;

on page 2, line 11, “joints etc..” should be changed to --joints, etc.--;

on page 4, a heading labeled “Brief Description of the Drawings” should be added before the drawing descriptions;

on page 6, line 20, “0,1 and 2 kW” should be changed to --0.1 and 2 kW--;

on page 7, line 12, “1A and 1 1B” should be changed to --1A and 1B-- and subsequently replaced with the appropriate corresponding reference characters;

on page 7, line 15, the definition of PLS must be completely written out;

on page 5, line 12, page 7, line 31, and page 8, line 21, “e.g.” should be changed to --example--;

on page 8, line 17, “axis a1 (and a2)” should be changed to --axes a1 and a2--.

Appropriate correction is required.

Claim Objections

Claim 1 is objected to because of the following informalities: on line 9, “(2mn)” must be changed accordingly with the new reference character because English alphabet must be used for letters. Appropriate correction is required.

Claim 2 is objected to because of the following informalities: on line 3, “at least one motor (5, 52)” makes reference to characters not shown on the drawings. Appropriate correction is required.

Claim 4 is objected to because of the following informalities: on line 3, “(cycle) timer” should be changed to --timer--. Appropriate correction is required.

Claim 6 is objected to because of the following informalities: on line 2, “the side” should be changed to --a side--. Appropriate correction is required.

Claim 8 is objected to because of the following informalities: on line 3, “output within” should be changed to --output is within--. Appropriate correction is required.

Claims 14 15, and 16 are objected to because of the following informalities: on line 1, “claims” should be changed to --claim--. Appropriate correction is required.

Claim 15 is objected to because of the following informalities: on line 3, “(e.g. a2) is” should be changed to --are--; on line 6, “said pair” should be changed to --said each pair--. Appropriate correction is required.

Claims 15, 16, and 18, are objected to because of the use of reference characters in parentheses to show examples of corresponding labels in the drawings is confusing. For example, in claim 15, on line 3, “(e.g. 1A, 1D)” should be deleted and any further reference to these characters in the claim should also be omitted and in claim 18 the lengthy list of reference characters in parentheses should also be omitted. Appropriate correction is required.

Claim 18 is objected to because of the following informalities: on line 3, the meaning of the abbreviation “PLS” should be fully written out.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention without undue experimentation. It is unclear how the drive source shown as a motor would produce the desired vibrations/rotations. For example, it is unclear where the vibration means are located (e.g. within the plate, underneath the plate). The side view (Figure 3) and the disclosure omit the location of the vibration mechanism and/or bellow cylinders so it is unclear where they are to be placed. Also, Applicant claims a functional single layer plate, but if bellow cylinders were used to produce the rotation they would need to be connected at both ends which would require two separate plate elements.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "etc" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "etc"), thereby rendering the scope of the claim(s) unascertainable.

Regarding claim 2, the phrase "preferably" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Regarding claim 5, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Furthermore, the term "a light and inexpensive material" is a relative term which renders the claim indefinite. The term "a light and inexpensive material" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Regarding claim 6, the term "desired friction" is a relative term which renders the claim indefinite. The term "desired friction" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 7 recites the limitation "the stabling (stable room or box)" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.

Claims 3, 4, and 8-18 depend from the rejected claim 1 and therefore are also indefinite for the reasons listed above with regards to claim 1.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed invention does not fall within at least one of the four categories of patent eligible subject matter recited in 35 U.S.C. 101 (process, machine, manufacture, or composition of matter) because the base (3) claimed in claim 1 is defined as ground "like the floor of an ordinary stabling (stable room) for a horse" on page 5, lines 6-7, of the Applicant's disclosure .

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

As best understood by the examiner, claims 1, 2, 3, 5, 7, 9, 10, 11, 12, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Ohshita (US 5,443,439).

Regarding claim 1, Ohshita discloses a vibrating bed apparatus for health purposes comprising a functional single layer plate (11) being arranged to be placed on a base (4) with a number of flexible spacers (7,8) holding the plate a predetermined distance above the base, and the plate being arranged to be set in vibration by means of at least one drive source (23, 56).

Regarding claim 2, Ohshita further discloses a motor (56) and a weight (57) eccentrically rotated by the motor.

Regarding claim 3, the motor disclosed by Ohshita is controlled by first, second, and power source switches which would therefore operate the drive source in a stepless or discretely variable manner (see column 6, lines 5-10).

Regarding claim 5, Ohshita discloses an elastic sheet (101) or urethane foam, which is a light and inexpensive material, as a core to the bed plate members (see Figure 26).

Regarding claim 7, Ohshita's device has a rectangular shape that corresponds to a bedframe of a user. Furthermore, any shape change (e.g. stable, bed) would be considered as an obvious design choice (See *In re Schreiber*, 128 F.3d at 1478, 44 USPQ2d at 1432).

Regarding claims 9 and 10, Ohshita discloses at least two plate elements (11) arranged adjacent to each other and hinged by hinges (61) along a common physical axis so each has an inner edge along the axis and an outer axis (see Figure 17).

Regarding claim 11, Ohshita further discloses that the plates can be physically separated from each other along the axis (see Figure 10).

Regarding claims 12 and 15, the plate elements disclosed by Ohshita are arranged so that they may be rotated from a substantially horizontal first position to an elevated oblique position.

Regarding claim 14, Ohshita discloses four plate elements arranged adjacent to each other with mutually crossing axes (see Figure 10).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohshita.

Regarding claim 6, Ohshita discloses a cover (103) covering the plate which would provide a desired friction against the user because Ohshita teaches that the user can enjoy the device without an added mattress (column 11, lines 50-65). Ohshita is silent as to the cover being flexible. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a flexible material for the cover in order to stretch the cover over the plate and to provide comfort to a user using Ohshita's device without a mattress.

Regarding claim 8, Ohshita is silent as to the driving source output range. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have operated Ohshita's drive source within a range of 0.1-2 kW for stimulating the muscles of the user because this range is well known in the art and it appears that the device disclosed by Ohshita would perform equally well when operated within the selected range. Furthermore, Applicant admits in the disclosure that this is a "normal" range for a motor in these devices and therefore well known in the art.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohshita as applied to claim 1 above and further in view of Cutler (US 5,437,608). Ohshita does not disclose a timer.

However, Cutler discloses a vibrating mat with a timer (44) to automatically turn the drive source off after a preselected amount of time. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide a timer to Ohshita's device as taught by Cutler so as to save energy. Cutler does not disclose that the timer automatically starts the drive source, but rather the device is restarted by pressing the on/off switch again. However, because the modified Ohshita's device has a timer and a controller, it would be capable of starting/stopping the power with an appropriate program. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have programmed the modified device of Ohshita to start/stop automatically for providing a specific amount of treatment to a user.

Claims 13, 16, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohshita as applied to claim 1 above and further in view of Calvin (US 3,392,723). Ohshita does not disclose bellow cylinders with compressors. However, Calvin discloses an oscillating bed with a top plate rotated by a bellow cylinder (26) inflated by a compressor (28) controlled by a control unit (29). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted Ohshita's driving mechanism with bellow cylinders as taught by Calvin for producing the rotation of the plate elements because the bellow cylinders taught by Calvin in the oscillating bed and Ohshita's vibrating bed produce the same up and down rotational movement of the plate elements. Furthermore, Calvin discloses one bellow cylinder per plate element (see Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have added a corresponding number of

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bellow cylinders for the number of plate elements in the modified device (e.g., at least 2 plate elements or 4 plate elements). See also *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) in which the court held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Matter whose telephone number is (571) 272-5270. The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Kristen C. Matter
Examiner
Art Unit 3771


JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
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